

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHRISTOPHER J. VELTHUYSEN,

Plaintiff,

v.

UNKNOWN GROTH,

Defendant.

Case No. 2:17-cv-169

HON. JANET T. NEFF

OPINION AND ORDER

Pursuant to 42 U.S.C. § 1983, Plaintiff filed this prisoner civil rights action on October 5, 2017, alleging that Defendant opened Plaintiff's legal mail outside Plaintiff's presence (ECF No. 1). On October 6, 2017, this Court issued an Order permitting Plaintiff to proceed in forma pauperis (ECF No. 3). On March 5, 2019, Defendant filed a Motion for Order to Revoke Plaintiff's In Forma Pauperis Status and To Dismiss (ECF No. 33). Plaintiff did not file any response to the motion. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, ECF No. 37) on March 25, 2019, recommending that this Court grant Defendant's motion. The matter is presently before the Court on Plaintiff's April 11, 2019 objections to the Report and Recommendation (ECF No. 39).¹ In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

¹ Plaintiff also filed an interlocutory appeal to the Sixth Circuit Court of Appeals (ECF No. 46), which was dismissed on July 24, 2019 (ECF No. 49).

Plaintiff makes two arguments in his objections. First, Plaintiff argues that the Magistrate Judge erred in ruling on Defendant's motion "before [he] was allowed to proceed forward" (Pl. Obj., ECF No. 39 at PageID.261). Plaintiff's argument lacks merit. The Magistrate Judge issued the Report and Recommendation well after the expiration of the 14-day response period for non-dispositive motions.

Second, Plaintiff argues that his in forma pauperis status should not be revoked because he is "in imminent danger of serious physical injury because continuously having misplaced, lost and not constitutionally placed legal mail handled properly can cause serious injury" (Pl. Obj., ECF No. 39 at PageID.261). The Magistrate Judge considered Plaintiff's argument and concluded that Plaintiff "failed to allege facts which show that he was under imminent danger of serious physical injury at the time he filed his complaint" (R&R, ECF No. 37 at PageID.255). Plaintiff's argument fails to demonstrate any factual or legal error in the Magistrate Judge's conclusion. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

THEREFORE, IT IS ORDERED that the Objections (ECF No. 39) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 37) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion for Order to Revoke Plaintiff's In Forma Pauperis Status and to Dismiss (ECF No. 33) is GRANTED; specifically, Plaintiff is ordered to pay the \$400.00 filing fee within 28 days of this Opinion and Order. If Plaintiff fails to pay the filing fee within 28 days, then the Complaint will be dismissed without prejudice.

Dated: September 3, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge